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**nize Wife as Such.**—A husband's desertion of his wife by refusal to treat her as his wife and by rejection of her appeals for reconciliation *held* not deprived of the element of permanency necessary to the granting of a divorce by his intimation that after an indefinite period when she should in some way not indicated have been sufficiently punished for an act in her childhood he might again take her back.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

**5. Divorce (§ 37 (3)\*)—Desertion without Promise of Return within Reasonable Time Is Permanent When Reconciliation Is Refused.**—A desertion which is complete at the time and gives no promise of a return within a reasonable time becomes permanent in law when the offending party refuses without cause to renew the marriage relation at the request in good faith of the other party.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

**6. Divorce (§ 37 (5)\*)—Desertion Justifying Different Divorces Differs Only in Period of Continuance.**—The abandonment and desertion which entitle a party to divorce from bed and board differs from that which is a cause for divorce from the bonds of matrimony only in the period for which desertion must continue.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

Appeal from Circuit Court, Rockingham County.

Suit for divorce by Marjorie Ringgold against Herschel Ringgold. From a decree granting insufficient relief, plaintiff appeals. Reversed and rendered.

*Geo. Conrad*, of Harrisonburg, for appellant.

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#### TURNER & HAPPERSETT *v.* HALL & CONNOR.

Sept. 16, 1920.

[104 S. E. 861.]

**1. Contracts (§ 10 (4)\*)—Contract to Sell, without Corresponding Agreement to Buy, Not Enforceable.**—An agreement to sell, without a corresponding agreement to buy, is not enforceable by either party; but this does not mean that the contract must always be binding on both parties, since it is not lack of mutuality, but lack of consideration, which renders a bilateral undertaking unenforceable against promisor.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 320, 336.]

**2. Contracts (§ 10 (5)\*)—Lack of Obligation of Purchaser Does Not Render Option Contract Void.**—In an option for purchase of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

land, supported by consideration from proposed purchaser, the vendor is bound, and the lack of obligation to exercise the option does not render the contract invalid.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 343.]

**3. Vendor and Purchaser (§ 16 (1\*))—Offer Made Binding by Acceptance.**—A naked offer to sell land, without consideration, may become binding by an acceptance before withdrawal; the purchaser's promise implied in his acceptance being a consideration for vendor's promise.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 320.]

**4. Contracts (§ 48\*)—Mines and Minerals (§ 64\*)—A Contract for Sale Being under Seal, Consideration Is Presumed.**—Assuming, where a contract for sale of coal lease contained no express promise to pay, that none is implied, the contract is unilateral; but the fact that it is under seal gives rise under the common-law rule to a conclusive presumption of consideration to the promisor.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 345.]

**5. Mines and Minerals (§ 64\*)—Where Option to Purchase Coal Lease Does Not Fix a Time Limit, a Reasonable Time Is Implied.**—Where no time is fixed in an instrument for the duration of an option to purchase coal lease, the law implies a reasonable time.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 422, 321.]

**6. Vendor and Purchaser (§ 46\*)—Courts Prefer Construction of Contract Which Will Result in Mutuality of Obligation.**—In a case of doubt as to whether a contract is one of sale or merely an option, and in the absence of pertinent contrary extrinsic facts or circumstances, the courts prefer a construction that will result in mutuality of obligation, and will lay hold of anything in the instrument from which a fair inference of correlative obligation may be made.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 398.]

**7. Evidence (§ 462\*)—Of Circumstances and Negotiations Admissible, Where Construction of Contract Is Doubtful.**—Where a contract leaves a doubt as to whether it was one of sale, requiring purchaser to pay, or merely an option, the court properly admitted evidence of pertinent and explanatory circumstances, correspondence, and dealer's negotiations surrounding its execution to aid construction.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 459.]

**8. Vendor and Purchaser (§ 81\*)—Error Not to Submit to the Jury Conflicting Evidence as to Construction of Contract.**—Where the meaning of the terms of a contract, as to whether it be of sale or merely an option, depend on controverted facts and conflicting extrinsic evidence, the question is for the jury, and refusal to submit it is reversible error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 212.]

**9. Appeal and Error (§ 843 (1)\*)—Notwithstanding Reversal under First Assignment, Others May Be Considered, Where Questions are Likely to Arise on Retrial.**—Although the conclusion reached under the first assignment of error will result in the reversal of a cause, it is proper to pass on other questions assigned, which may arise at the next trial.

**10. Evidence (§ 461 (1)\*)—Of Intention Held Admissible for Construction of Contract.**—Where it could not be determined from the face of the contract whether it sold a coal lease, binding purchaser to pay, or was merely an option, testimony that some of purchasers had said that they would give \$8,000 for the lease was not subject to the objection of varying the terms of a written instrument, and was admissible to show the parties' intention.

**11. Vendor and Purchaser (§ 301\*)—Unpaid Vendor May Recover Purchase Price in Action at Law.**—On vendee's breach, the vendor's remedy, in an action at law, is not confined to damages for the difference between the contract price and market price; but he may recover the purchase money due, without being compelled to go into equity and sue for specific performance.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 382.]

**12. Mines and Minerals (§ 64\*)—Facts Held to Excuse Vendors from Making Tender of Formal Transfer of Coal Lease.**—If a contract, when construed as one of sale, was a sufficient assignment of the coal lease, and if the failure to make a tender of formal transfer or conveyance thereof would have been otherwise material, the purchasers' repudiation of the contract and refusal to recognize that they were bound by its excused tender.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 543.]

Error to Circuit Court, Wise County.

Action by Hall & Connor against Turner & Happersett. Judgment for plaintiffs, and defendants bring error. Reversed.

*Bond & Bruce*, of Wise, and *Hall, Wingfield & Apperson*, of Roanoke, for plaintiffs in error.

*Fulton & Vicars* and *A. N. Kilgore*, all of Wise, for defendants in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.